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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1169

INTERNATIONAL WOODWORKERS OF AMERICA, AFL-CIO, et al.,

Petitioners,

v.

MASONITE CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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IN THE

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OCTOBER TERM, 1968

No. 1100

INTERNATIONAL WOODWORKERS OF AMERICA, AFL-CIO, et al.,

Petitioners,

v.

MASONITE CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

Respondent prays that this Court deny the petition for a writ of certiorari to the Supreme Court of Mississippi, seeking to review a decision entered by that court on November 18, 1968.

OPINION BELOW

The opinion of the Supreme Court of Mississippi sought to be reviewed is reported at 216 So.2d 691; it is reprinted as Appendix A to Petitioners' petition for a writ of certiorari.

JURISDICTION

The judgment and opinion of the Supreme Court of Mississippi sought to be reviewed was entered on Novem-

ber 18, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Where a union is sued in a state court for an injunction to remedy a violent strike in breach of contract, and the union does not exercise its right to remove the suit to the appropriate federal district court, does Section 4 of the Norris-LaGuardia Act prohibit the state court from issuing an injunction?

2. Where the Regional Director of the National Labor Relations Board dismisses union charges of employer unfair labor practices, and concludes that the employer's actions violated neither its collective bargaining agreement with the union nor the National Labor Relations Act, is a state court prohibited from enjoining a violent strike in breach of contract because of union allegations of employer unfair labor practices?

STATEMENT OF THE CASE

The collective bargaining agreement between Masonite and the International Woodworkers and its Local 5-443 (hereinafter "Union") required that all "complaints and grievances by employees and the Union" be resolved through an elaborate grievance procedure ending with binding arbitration. The agreement also contained a broad no-strike pledge. Despite these provisions, the Union organized and instituted the work stoppage of April 21 in order to force Masonite to yield to its complaints, which should have been processed under the grievance and arbitration procedure.

Violence flared from the beginning of the strike on April 21, 1967. Immediately there was mass picketing at

the gates (R. 47, 48, 506, 757, 785).[1] For several days all entrances to the plant were blockaded by the pickets; no one entered (R. 49-55). The automobiles of non-unit employees were violently rocked and damaged (R. 54, 508, 773, 774, 788, 1079). Supervisors were assaulted (R. 805, 806). The strikers used every conceivable means of violence to prevent both non-unit and unit employees from returning to their jobs. Employees were threatened with beatings and whippings (R. 1050, 1097, 1104). Strikers chased other employees in automobiles, attempting to run them off the highways (R. 789, 958, 959, 1034, 1068, 1069, 1103). Roofing nails were strewn in the entranceways to the plant parking areas and in driveways of employees' homes (R. 1117, 1073, 1075). Shotguns were discharged into employees' homes at night (R. 1080). It was in this atmosphere that Masonite sought relief in the state courts of Mississippi.

On May 1, 1967, Justice Robertson of the Supreme Court of Mississippi issued a fiat to the Chancery Clerk of Jones County directing that an injunction issue against the Union enjoining the strike and all picketing (R. 16-17). In spite of this injunction the strike and the picketing continued.

On May 17 the Union filed unfair labor practice charges against Masonite before the National Labor Relations Board, alleging that the strike was caused by Masonite's failure to bargain in good faith, and that the strikers were protected unfair labor practice strikers under 29 U.S.C. §§ 158(a)(1), (3) and (5) (App. A, *infra*, p. 12).

On June 7 the Union responded to the complaint filed by Masonite in the Chancery Court. In its answer it alleged,

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[1] "R" references are to the record from the court below and filed in this Court in accordance with the Rules. "A" references are to the appendices contained in the petition. "Pet." refers to Petitioners' petition and supporting brief.

among other defenses, that the subject matter of the suit had been pre-empted by the National Labor Relations Act (R. 26-31). In substance the Union argued that the strike was called to remedy unfair labor practices of Masonite, and that, therefore, the National Labor Relations Board had exclusive jurisdiction.

A hearing was held in the Chancery Court from June 13 through 22. Masonite called numerous witnesses and introduced voluminous evidence showing that the strike was called and conducted in violation of the no-strike provisions of the labor agreement. The violent nature of the strike was testified to by numerous witnesses. At the conclusion of Masonite's case, the Union declined to introduce *any* testimony or other evidence in support of the defenses alleged in its answer (R. 1421). The question of Norris-LaGuardia's application to state courts was not raised.

At the completion of the hearing, Chancellor Clark entered an order dismissing Masonite's complaint (R. 1425). This was followed by Chancellor Clark's opinion, in which he found that the court lacked jurisdiction of the subject matter, after first stating the issue to be:

> As the Court then understands the issue, in order to determine whether or not it is a legal or an illegal strike, this Court must first determine whether or not the complainant has been guilty of unfair labor practices. That is the difficulty that this Court then runs into because the National Labor Relations Board has been designated by the Congress to decide this issue. (R. 1424 G)

On June 30 the Regional Director of the NLRB ruled on the Union's charges of unfair labor practices. He refused to issue a complaint against Masonite. He found that Masonite had not committed any unfair labor practices and that, since the strike was "in contravention of the 'Interruption of Work' clause in the contract", it was

unprotected activity under the National Labor Relations Act (App. B, *infra*, p. 15).

Masonite filed an application for supersedeas in the Chancery Court on July 10 (R. 1436, 1437). This application was denied by Chancellor Clark's order entered on July 21 (R. 1443). In denying the application, Chancellor Clark abandoned the unfair labor practice theory on which he had dismissed Masonite's complaint, and found, pursuant to dicta in the Court of Appeals opinion in *Avco*, 376 F.2d 337 (6th Cir. 1967), that, by virtue of Norris-LaGuardia, state courts lacked jurisdiction of the subject matter in this type of case (R. 1426-1430).

On July 24 Chief Justice Ethridge of the Supreme Court of Mississippi issued a fiat granting a writ of supersedeas.

After considering the record and hearing arguments, an opinion was rendered by the Mississippi Supreme Court. (A-1) That court concluded:

1. The mere allegation that unfair labor practices have been committed does not divest the state courts of jurisdiction in a breach-of-contract action.
2. The Norris-LaGuardia Act does not apply to state courts.
3. The Mississippi state courts, even in the absence of a collective bargaining agreement, may enjoin picketing, when the "brutal hand of violence and dire threats attend a strike."

REASONS FOR DENYING THE WRIT

1. The Norris-LaGuardia Act, addressed as it is to "courts of the United States", does not divest state courts of traditional equitable remedies. A union defendant in a state court suit for an injunction to remedy a strike in breach of contract has the right, confirmed by this Court in *Avco Corp.* v. *Aero Lodge 735, IAM*, 390 U.S. 557

(1968), *rehearing denied*, 391 U.S. 929, to remove the case to the appropriate federal district court under 28 U.S.C. § 1441(b). The Unions here made no attempt to remove and thus to assure themselves of Norris-LaGuardia protection.

This case presents no novel federal question that requires resolution by this Court. All judicial authorities but one have confined the prohibitions of the Norris-LaGuardia Act to the federal courts. This Court held, in *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, 196 (1962), that Norris-LaGuardia prohibited federal district courts from issuing injunctions to remedy strikes in breach of contract and, in so doing, this Court described Norris-LaGuardia as the statute which "barred federal courts from issuing injunctions". This Court was asked to extend that holding to state courts in *Avco*. The Sixth Circuit had said in dicta that the "remedies available in State Courts are limited to the remedies available under Federal law." 376 F.2d 337, 343 (6th Cir. 1967). Not once, but twice in the *Avco* opinion, this Court expressly refused to adopt that sweeping dictum of the Sixth Circuit. *Avco Corp.* v. *Aero Lodge 735, IAM, supra* at 560, 561. Accordingly, the Supreme Court of Mississippi was correct in deciding, as it did, that Norris-LaGuardia did not preclude it from issuing an injunction in a violent breach-of-contract strike.

In furtherance of substantive principles of federal labor law, the Supreme Court of Mississippi required Petitioners to faithfully observe a contract they had executed. Petitioners do not deny that they had a collective bargaining agreement with Masonite; that the collective bargaining agreement contained a no-strike clause; and that the signatory Union struck in breach of that contract. Their sole complaint to this Court is that the Supreme Court of Mississippi issued its traditional remedy to stop Petitioners' breach of contract.

This Court has recognized that, by enactment of § 301, Congress intended to expand, not limit, the availability of forums for the enforcement of labor contracts. Thus, in *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 508-509 (1962), this Court stated:

> The legislative history makes clear that the basic purpose of § 301(a) was not to limit, but to expand, the availability of forums for the enforcement of contracts made by labor organizations. Moreover, there is explicit evidence that Congress expressly intended not to encroach upon the existing jurisdiction of the state courts. 368 U.S. at 508-509.

This Court added that:

> The clear implication of the entire record of the congressional debates in both 1946 and 1947 is that the purpose of conferring jurisdiction upon the federal district courts was not to displace, but to supplement, the thoroughly considered jurisdiction of the courts of the various States over contracts made by labor organizations. 368 U.S. at 511.

Lastly, this Court stated:

> . . . the entire tenor of the 1947 legislative history confirms that the purpose of § 301, like its counterpart in the Case bill, was to fill the gaps in the jurisdictional law of some of the States, not to abolish existing state court jurisdiction. 368 U.S. at 512.

Petitioners remained in the state courts of Mississippi. As the court below observed: "Injunctive relief for the enforcement of contracts is available in Mississippi." (A-13) If Petitioners wished to escape this result, their remedy was to file a timely petition to remove the suit from the state to the appropriate federal court under 28 U.S.C. § 1441(b). Petitioners did not have to await the decision of the Sixth Circuit in *Avco* as they imply in their

petition (Pet., 9). Prior to May 2, 1967, when the *Avco* decision was issued by the Sixth Circuit, many federal district courts had accepted the removal of state court injunction suits.[2] Petitioners elected to stay in the Mississippi state courts, whose jurisprudence contemplates the injunction they now challenge here.

The judgment of the Supreme Court of Mississippi may be sustained on a wholly different ground. It found that "violence attended the picketing" (A-2). Petitioners do not challenge that finding. Since Petitioners' picketing in breach of contract was attended by violence, the Supreme Court of Mississippi correctly invoked traditional state court jurisdiction to enjoin violence. ". . . [W]hen the brutal hand of violence and dire threats attend a strike, there is no doubt that the State of Mississippi and the other states have the authority under their police power to grant an injunction to protect property and the lives of persons of the state." (A-13) Mississippi may enjoin all picketing enmeshed with violence, irrespective of the interplay between Norris-LaGuardia and § 301. See *UAW* v. *Wisconsin Employment Relations Bd.*, 351 U.S. 266 (1956).

Petitioners state that there was no "conceivable enmeshment" from which jurisdiction to enjoin peaceful strike activity could arise (Pet., 18, n.22). There is no factual basis for this conclusion. The decision below states "violence attended the picketing" (A-2). Justice Brady's opinion does not limit the finding of violence to any one location or to any one time. It simply "attended the

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[2] *Katz* v. *Architectural & Eng'r Guild, Local 66*, 263 F.Supp. 222 (S.D. N.Y. 1966); *Sealtest Foods Div.* v. *Conrad*, 262 F.Supp. 623 (N.D. N.Y. 1966); *Food Fair Stores, Inc.* v. *Retail Clerks Dist. Council No. 11*, 229 F.Supp. 123 (E.D. Pa. 1964); *Tri-Boro Bagel Co.* v. *Bakery Drivers Union Local 802*, 228 F.Supp. 720 (E.D. N.Y. 1963); *H. A. Lott, Inc.* v. *Hoisting & Portable Eng'r Local No. 450*, 222 F.Supp. 993 (S.D. Tex. 1963); *Crestwood Dairy* v. *Kelley*, 222 F.Supp. 614 (E.D. N.Y. 1963).

picketing." As this Court stated in *Milk Wagon Drivers' Union, Local 753* v. *Meadowmoor Dairies, Inc.*, 312 U.S. 287 (1941):

> And acts which in isolation are peaceful may be part of a coercive thrust when entangled with acts of violence. The picketing in this case was set in a background of violence. In such a setting it could justifiably be concluded that the momentum of fear generated by past violence would survive even though future picketing might be wholly peaceful. So the supreme court of Illinois found. 312 U.S. at 294.

The Supreme Court of Mississippi is not alone in finding that violence attended the Petitioners' strike. The United States District Court for the Southern District of Mississippi found, in relation to this strike: [3]

> Violence flared from the first day of the strike. Employees were beaten, and night riders shot into employees' homes. Vehicles were rocked and roofing nails thrown into the streets. Utility lines were dynamited. The violence reached its high point when a young unarmed plant security guard was shot and killed.

2. The Petitioners' conduct was unprotected by the National Labor Relations Act. The Regional Director of the National Labor Relations Board declined to issue a complaint on Petitioners' charge that the Respondent had committed unfair labor practices under that Act (App. B, *infra*, p. 15). Accordingly, the jurisdiction of the Mississippi state courts was not pre-empted by §§ 7, 8, 9 and 13 of the National Labor Relations Act.

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[3] The decision was issued in Civil No. 2283 on March 4, 1969 in the case of *Jolly* v. *Gorman*, a suit by certain individuals formerly represented by Petitioners, attempting to set aside the settlement of certain strike issues referred to in footnote 4 of Petitioners' petition and supporting brief.

The Supreme Court of Mississippi correctly rejected Petitioners' arguments that alleged unfair labor practices deprived that court from enjoining a strike in breach of contract that was attended by violence. The only unfair labor practices that appear in this case are in Petitioners' pleading. On May 17, Petitioners filed a charge with the Regional Office of the National Labor Relations Board in New Orleans (App. A, *infra*, p. 12). This charge was fully investigated and dismissed by the Regional Director. In dismissing the charge, he reasoned:

> The investigation disclosed that the implementation of certain changes in working procedures by the Company was neither in derogation of its bargaining obligations under the Act, nor contrary to the provisions of the collective bargaining agreement. Moreover, the strike that followed in contravention of the "Interruption of Work" clause in the contract was unprotected activity within the meaning of the National Labor Relations Act. I am, therefore, refusing to issue complaint in this matter. (App. B, *infra*, p. 15.)

The final decision and discretion in the issuance of complaints of unfair labor practices is vested in the General Counsel of the National Labor Relations Board acting through his designated Regional Director. "He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 160 of this title, and in respect of the prosecution of such complaints before the Board. . . ." 29 U.S.C. § 153(d). See *Hourihan* v. *NLRB*, 201 F.2d 187, 188 (D.C. Cir. 1952).

To buttress its argument that the jurisdiction of the Supreme Court of Mississippi was "pre-empted", Petitioners rely principally on this Court's decision in *Mastro Plastics Corp.* v. *NLRB*, 350 U.S. 270 (1956). The reliance is patently misplaced. In *Mastro Plastics*, this Court en-

forced an NLRB conclusion that the union was relieved of its contractual obligation not to strike because of substantial unfair labor practices by the employer. In *Mastro Plastics*, the Regional Director had issued a complaint against the employer which resulted in a hearing before a Trial Examiner and the National Labor Relations Board. Here, the prosecuting arm of the NLRB has refused to proceed against the Respondent.

Moreover, even if Respondent had engaged in unfair labor practices, the courts, federal and state, are not ousted of jurisdiction by virtue of that fact alone. *Smith* v. *Evening News Ass'n*, 371 U.S. 195 (1962). "[W]e likewise reject that [pre-emption] doctrine here where the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the National Labor Relations Board." 371 U.S. at 197.

CONCLUSION

For the foregoing reasons, the Petitioners' request for a writ of certiorari should be denied.

Respectfully submitted,

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March 28, 1969

APPENDIX A

Form NLRB-501
(Rev. 12-64)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No.: 15-CA-3081

Date Filed: May 17, 1967

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

Name of Employer: Masonite Corporation

Number of Workers Employed: about 2500

Address of Establishment (Street and number, city, State, and ZIP code): P. O. Box 1048, Laurel, Mississippi 39441

Type of Establishment (Factory, mine, wholesaler, etc.): factory

Identify principal product or service: wood products

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.): On or about

various dates beginning April 21, 1967, it, by its officers, agents and representatives, terminated the employment of over 80 employees, and changed the terms and conditions of all unit employees, because of their protected concerted activities or because of their membership and activities in behalf of a labor organization, and at all times since said date has refused and does now refuse to employ such employees, thereby discriminating against them in violation of Section 8(a)(3) of the Act.

On or about November 16, 1966, and at all times since said date, it, by its officers, agents and representatives, refused to bargain collectively with International Woodworkers of America, AFL-CIO, and its Local Union 5-443, a labor organization chosen by a majority of its employees in an appropriate unit, for the purposes of collective bargaining in respect to rates of pay, hours of employment, and other terms and conditions of employment.

By the acts set forth in the paragraphs above, and by other acts and conduct, it, by its officers, agents and representatives, interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number): International Woodworkers of America, AFL-CIO, and its Local Union 5-443

4. Address (Street and number, city, State, and ZIP code): 414 Wausau Street, Laurel, Mississippi *and* 1962 Madison Avenue, Memphis, Tennessee 38104

Telephone No.: AC 901 BR 2-7557

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization): ————————

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By: /s/ JAMES E. YOUNGDAHL
(Signature of representative or person filing charge)
JAMES E. YOUNGDAHL
McMATH, LEATHERMAN, WOODS & YOUNGDAHL
(Title, if any)
711 W. 3rd St., Little Rock, Arkansas 72201

May 13, 1967
(Date)

APPENDIX B

NATIONAL LABOR RELATIONS BOARD

REGION 15

T6024 Federal Building (Loyola)
701 Loyola Avenue, New Orleans, Louisiana 70113

June 30, 1967

Telephone 527-6396
Re: Masonite Corporation
Laurel, Mississippi
Case No. 15-CA-3081

Mr. James E. Youngdahl
Attorney at Law
McMath, Leatherman, Woods & Youngdahl
711 West Third Street
Little Rock, Arkansas 72201

Dear Mr. Youngdahl:

The above-captioned case charging violations under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

It appears that further proceedings are not warranted at this time. The investigation disclosed that the implementation of certain changes in working procedures by the Company was neither in derogation of its bargaining obligations under the Act, nor contrary to the provisions of the collective bargaining agreement. Moreover, the strike that followed in controvention of the "Interruption of Work" clause in the contract was unprotected activity within the meaning of the National Labor Relations Act. I am, therefore, refusing to issue complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations (Section 102.19), you may obtain a review of this action by filing a request for such review with the

Appendix B

General Counsel of the National Labor Relations Board, Washington, D. C., 20570, and a copy with me. This request must contain a complete statement setting forth the facts and reasons upon which it is based. The request must be received by the General Counsel in Washington, D. C., by the close of business on July 13, 1967. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request for extension of time should be submitted to me.

Very truly yours,
JOHN F. LEBUS
Regional Director

CERTIFIED MAIL

cc: Mr. Hulse Hays, Attorney at Law, 603 Dixie Terminal Bldg., Cincinnati, Ohio 45202
cc: Mr. A. F. Hartung, President, IWA, AFL-CIO, CLC, 1622 North Lombard Street, Portland, Oregon 97217
cc: Mr. J. L. Baughman, President, Southern States Regional Council, IWA, AFL-CIO, 1962 Madison Avenue, Memphis, Tennessee 38104
cc: J. D. Jolly, President, Local 5-443, IWA, 414 Wausau Street, Laurel, Miss. 39440
cc: Masonite Corporation, c/o James D. Robertson, Director of Employee Relations, P. O. Box 1048, Laurel, Mississippi 39440
cc: General Counsel, NLRB, Washington, D. C. 20570